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| V.L., Appellant |) | |
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| and |) | Docket No. 12-1444 |
| |) | Issued: November 27, 2012 |
| U.S. POSTAL SERVICE, PROCESSING & |) | |
| DISTRIBUTION CENTER, Greensboro, NC, |) | |
| Employer |) | |
| |) | |

Case Submitted on the Record

Before:
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

On June 18, 2012 appellant filed a timely appeal from January 11 and 23, 2012 merit decisions of the Office of Workers' Compensation Programs (OWCP) denying her claim for disability compensation. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The issue is whether appellant was disabled from August 12 through September 14 and November 8 to December 13, 2011 causally related to her accepted employment injury.

This case has previously been before the Board. In a decision dated November 2, 2011, the Board affirmed a February 15, 2011 decision denying appellant's claim for an increased

¹ 5 U.S.C. § 8101 *et seq.*

schedule award.² The facts as set forth in the prior decision are hereby incorporated by reference. The facts relevant to the instant appeal will be set forth.

In a decision dated August 3, 2006, OWCP reduced appellant's compensation after finding that her actual earnings effective September 19, 2005 as a sales and service distribution associate fairly and reasonably represented her loss of wage-earning capacity. By decision dated October 17, 2008, it denied modification of its August 3, 2006 decision. In a decision dated September 28, 2009, OWCP denied appellant's claim for compensation from May 2 to June 13, 2009.

By decision dated January 19, 2010, OWCP modified the August 3, 2006 loss of wage-earning capacity determination after finding that appellant's condition had worsened such that she was unable to perform the duties of her modified position. It paid her compensation from June 14 through December 18, 2009.³

On January 18, 2010 appellant underwent a right shoulder arthroscopy with debridement of the labrum and the subacromial bursitis. OWCP paid disability compensation on the periodic rolls. On June 1, 2010 appellant returned to limited-duty employment.

Appellant stopped work on February 12, 2011 and filed a claim for compensation beginning that date. By letter dated April 5, 2011, OWCP noted that she had filed an occupational disease claim, assigned file number xxxxxx396, and listed the date that she stopped work due to her occupational disease as February 12, 2011. It requested that she clarify whether she was requesting compensation under the current claim number or her occupational disease claim and submit medical evidence supporting employment-related disability.

By decision dated May 10, 2011, OWCP denied appellant's claim for compensation from February 12 to May 12, 2011. It found that she had not submitted sufficient evidence to establish that she was disabled during this period.

On July 14, 2011 appellant underwent a repair of a partial thickness rotator cuff tear of the right shoulder with a debridement of the degenerative superior labral tear and humeral head chondromalacia.

Appellant submitted additional claims for compensation.⁴ On August 16, 2011 she filed a claim for compensation from August 12 to September 14, 2011. On August 12, 2011

² Docket No. 11-953 (issued November 2, 2011). OWCP accepted that on September 1, 2001 appellant, then a 47-year-old mail processor, sustained a strain of the right shoulder and primary localized osteoarthritis in the performance of duty. On May 20, 2004 it granted her a schedule award for a 15 percent permanent impairment of the right upper extremity.

³ In a decision dated January 21, 2010, OWCP modified its September 28, 2009 decision and found that appellant was entitled to compensation from May 11 through June 13, 2009 but denied compensation from May 2 through 10, 2009. By decision dated August 27, 2010, it denied her claim for an increased schedule award. On December 15, 2010 an OWCP hearing representative vacated the August 27, 2010 decision. In a decision dated February 15, 2011, OWCP again denied appellant's claim for an additional schedule award.

⁴ On August 5, 2011 appellant requested that OWCP accept her left arm condition as a consequential injury.

Dr. Justin W. Chandler, a Board-certified orthopedic surgeon, found that appellant was “[d]oing well with regards to her right shoulder surgery. He diagnosed left shoulder rotator cuff tendinosis/impingement due to extensive use of her left arm compensating for the injured right side. Dr. Chandler found that appellant was unable to work. In an accompanying duty status report, he found that she was disabled from employment. Dr. Chandler diagnosed left shoulder pain and status post right shoulder surgery and checked “yes” that the diagnosis was due to the injury. The form listed the date of injury as February 12, 2011. Dr. Chandler submitted identical duty status reports on September 14, October 31 and December 13, 2011.

By letter dated August 22, 2011, OWCP advised appellant that it had not authorized the right shoulder surgery. It further noted that the evidence indicated that she sustained a new injury on February 12, 2011. OWCP requested that appellant submit medical evidence showing that her July 14, 2011 surgery was due to her September 1, 2001 employment injury.

In a decision dated September 12, 2011, OWCP denied appellant’s claim for compensation from July 14 to August 13, 2011.

On September 12, 2011 appellant requested reconsideration. In a report dated September 23, 2011, Dr. Chandler attributed appellant’s right shoulder problems to her September 1, 2011 work injury. He discussed her three shoulder surgeries and asserted that her “most recent exacerbation at work [on February 12, 2011] was simply an exacerbation of her continued disability from the initial injury of [September 1, 2011] and should be treated as such.”

In a decision dated September 27, 2011, OWCP denied appellant’s claim for compensation from August 12 to September 14, 2011.

On October 7, 2011 appellant requested a review of the written record by an OWCP hearing representative of OWCP’s decision dated September 27, 2011.

By decision dated October 14, 2011, OWCP denied modification of its September 12, 2011 decision.

On October 19, 2011 appellant requested reconsideration of the October 14, 2011 decision. She indicated that OWCP did not know which case number she should pursue and noted that there was evidence in both file numbers.

By decision dated October 28, 2011, OWCP denied appellant’s claim for compensation from September 14 to October 31, 2011. In a decision dated November 1, 2011, it denied her request for reconsideration of its October 14 and September 1, 2011 decisions as she had not submitted evidence or raised an argument sufficient to warrant reopening her case for further review of the merits under 5 U.S.C. § 8128.

In a decision dated December 12, 2011, OWCP denied appellant’s claim for compensation from October 31 through November 7, 2011.

By decision dated January 11, 2012, an OWCP hearing representative affirmed the September 27, 2011 decision. She found that the medical evidence did not relate the disability to the September 2011 injury but instead to a new injury in 2011.

In a decision dated January 23, 2012, OWCP denied appellant's claim for compensation from November 8 to December 13, 2011.

On appeal appellant argued that she should have filed an occupational disease claim or recurrence of disability as she had a fourth right shoulder injury. She maintained that her medical treatment was covered under the current file number and that she was getting bounced back and forth between claims.

LEGAL PRECEDENT

The term disability as used in FECA⁵ means the incapacity because of an employment injury to earn the wages that the employee was receiving at the time of injury.⁶ Whether a particular injury caused an employee disability for employment is a medical issue which must be resolved by competent medical evidence.⁷ When the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in the employment held when injured, the employee is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.⁸ The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.⁹

ANALYSIS

OWCP accepted that appellant sustained a right shoulder strain and localized osteoarthritis of the right shoulder due to a September 1, 2001 employment injury. In a decision dated August 3, 2006, it reduced her compensation after finding that her actual earnings as a distribution clerk fairly and reasonably represented her loss of wage-earning capacity. On January 19, 2010 OWCP modified its loss of wage-earning capacity determination after finding that her condition had materially worsened and paid her compensation for total disability. On June 1, 2010 appellant returned to modified employment.

Appellant stopped work on February 12, 2011 and requested compensation for total disability beginning that date. On July 14, 2011 she underwent a repair of a right partial thickness rotator cuff tear. Appellant has the burden to establish that she was disabled from August 12 through September 14 and November 8 through December 13, 2011 due to her September 1, 2001 employment injury. The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of

⁵ 5 U.S.C. § 8101 *et seq.*; 20 C.F.R. § 10.5(f).

⁶ *Paul E. Thams*, 56 ECAB 503 (2005).

⁷ *Id.*

⁸ *Id.*

⁹ *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.¹⁰

Appellant submitted duty status reports from Dr. Chandler dated August 12, September 14, October 31 and December 13, 2011. Dr. Chandler diagnosed left shoulder pain and status post right shoulder surgery and checked “yes” that the diagnosis was due to the injury. He found that appellant was disabled from employment. The forms, however, listed the date of injury as February 12, 2011. The Board has held that an opinion on causal relationship which consists only of a physician checking “yes” to a medical form question on whether the claimant’s condition was related to the history given is of little probative value. Without explanation or rationale for the conclusions reached, such report is insufficient to establish causal relationship.¹¹

In an August 12, 2011 progress report, Dr. Chandler related that appellant was doing well after the surgery on her right shoulder. He diagnosed rotator cuff tendinosis and impingement on the left side as a result of overuse in compensating for the right shoulder injury. Dr. Chandler found that appellant was disabled from work. He did not, however, attribute her disability or her need for right shoulder surgery to the September 1, 2001 employment injury. Medical evidence that does not offer any opinion regarding the cause of an employee’s condition is of diminished probative value on the issue of causal relationship.¹²

On September 23, 2011 Dr. Chandler stated that the problems that appellant had with her right shoulder resulted from her September 1, 2001 employment injury. He indicated that she had experienced an exacerbation of her shoulder condition on February 12, 2011 but that her disability remained due to the original work injury. Dr. Chandler, however, did not specifically address whether appellant was disabled from August 12 through September 14 or November 8 through December 13, 2011. He did not provide any rationale for his stated conclusion that appellant’s disability resulted from her September 1, 2001 work injury. The issue of whether a claimant’s disability is related to an accepted condition is a medical question which must be established by a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disability is causally related to employment factors and supports that conclusion with sound medical reasoning.¹³

On appeal appellant argues that she should have filed an occupational disease claim or for recurrence of disability due to another shoulder injury. The Board’s jurisdiction is limited to reviewing final decisions of OWCP.¹⁴

¹⁰ See *Fereidoon Kharabi*, *supra* note 9.

¹¹ *Cecelia M. Corley*, 56 ECAB 662 (2005); *Deborah L. Beatty*, 54 ECAB 334 (2003) (the checking of a box “yes” in a form report, without additional explanation or rationale, is insufficient to establish causal relationship).

¹² *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *Conard Hightower*, 54 ECAB 796 (2003).

¹³ *Sandra D. Pruitt*, 57 ECAB 126 (2005).

¹⁴ 20 C.F.R. § 501.2(c).

Appellant also argues that OWCP switched between her two file numbers. While OWCP noted in correspondence that she had filed an occupational disease claim, she filed her claim for compensation under the current file number. She has the burden to submit medical evidence to establish that she is disabled due to her accepted September 1, 2001 work injury. An award of compensation may not be based on surmise, conjecture, speculation, or upon her own belief that there is a causal relationship between her claimed condition and his employment.¹⁵ Appellant must submit a physician's report in which the physician reviews those factors of employment identified by her as causing his condition and, taking these factors into consideration as well as findings upon examination and the medical history, explain how employment factors caused or aggravated any diagnosed condition and present medical rationale in support of his or her opinion.¹⁶ She failed to discharge her burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established that she was disabled from August 12 through September 14 and November 8 through December 13, 2011 causally related to her accepted employment injury.

¹⁵ *D.E.*, 58 ECAB 448 (2007); *George H. Clark*, 56 ECAB 162 (2004); *Patricia J. Glenn*, 53 ECAB 159 (2001).

¹⁶ *D.D.*, 57 ECAB 734 (2006); *Robert Broome*, 55 ECAB 339 (2004).

ORDER

IT IS HEREBY ORDERED THAT January 23 and 11, 2012 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 27, 2012
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board